APPEAL NO. 040112
FILED FEBRUARY 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on December 18, 2003. The hearing officer determined that respondent's (claimant) date of maximum medical improvement (MMI) and impairment rating (IR) cannot be determined at this time, and that Dr. R was not properly appointed to act as the designated doctor by the Texas Workers' Compensation Commission (Commission) in accordance with Section 408.0041 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.5(d)(2)(C) (Rule 130.5(d)(2)(C)). Appellant (carrier) appealed, asserting that Dr. R was properly appointed by the Commission to act as designated doctor pursuant to the 1989 Act and rules, and in the alternate, that Dr. R's MMI and IR certification is not contrary to the great weight of the other medical evidence. Claimant responded, urging affirmance.

DECISION

Affirmed.

Claimant sustained a compensable injury on _____, when she fell from a chair landing on her left side. Based upon the medical evidence submitted at the hearing, the compensable injury appears to involve claimant's left wrist and left knee. On July 9, 2002, claimant underwent an MRI of her left knee, which revealed a tear of the anterior cruciate ligament and a small, lateral, suprapatellar effusion. On September 6, 2002, carrier approved a left knee arthroscopy. On September 16, 2002, claimant was seen by Dr. R for a designated doctor's examination. Dr. R certified that claimant was at MMI as of the date of the examination with a zero percent IR. On November 13, 2002, claimant underwent the approved left knee arthroscopy. In evidence are post-surgical follow-up notes from claimant's treating surgeon, which reflect a gradual improvement of claimant's condition. On July 9, 2003, the Commission sent Dr. R a letter of clarification. Attached to the Commission letter was a letter from claimant's attorney in which concern was expressed over Dr. R's qualifications to act as the designated doctor in this case. The letter points out that claimant's injury is orthopedic in nature and that Dr. R is not an orthopedic doctor. In his response dated July 15, 2003, Dr. R acknowledged that he has not treated any orthopedic patients over the last year; that he has performed no orthopedic procedures over the last year; that he will not treat any orthopedic injuries whatsoever; that he has performed no knee arthroscopies; and that he was unaware that the procedure had been approved at the time of his examination of claimant but his opinion regarding MMI and IR remains unchanged.

The hearing officer did not err in determining that Dr. R did not have the qualifications required to serve as designated doctor for orthopedic injuries such as

those suffered by claimant. Section 408.0041(b) provides in relevant part that the designated doctor should be one:

> [W]hose credentials are appropriate for the issue in question and the injured employee's medical condition. The designated doctor doing the review must be trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and the treatment and procedures performed must be within the scope of practice of the designated doctor.

Rule 130.5(d)(2)(C) provides that:

> If at the time the request is made, the commission has previously assigned a designated doctor to the claim, the commission shall use that doctor again, if the doctor is still qualified as described in this subsection and available. Otherwise, the commission shall select the next available doctor on the commission's Designated Doctor List who:…has credentials appropriate to the issue in question, is trained and experienced with the treatment and procedures used by the doctor treating the patient's medical condition, and whose scope of practice includes the treatment and procedures performed. In selecting a designated doctor, completed medical procedures may be considered secondary selection criteria.

In this case, the evidence does not establish that Dr. R was trained and experienced with the treatment and procedures used by the doctor treating claimant's condition. Dr. R admitted that orthopedics was not within the scope of his practice. The requirement that the designated doctor be experienced with the treatments and procedures is embodied in the requirement that the treatments and procedures be within the scope of the doctor's practice. *See* Texas Workers' Compensation Commission Appeal No. 030737-s, decided May 14, 2003. We decline carrier's invitation to reconsider our previous interpretation of Section 408.0041 and Rule 130.5, in the absence of new authority. Because we affirm the hearing officer's determination that Dr. R was not qualified to act as designated doctor in this case, and because claimant is entitled to be examined by a qualified designated doctor, we perceive no error in the hearing officer's determination that MMI and IR cannot be determined at this time.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **ATLANTIC MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

NICHOLAS PETERS
12801 NORTH CENTRAL EXPRESSWAY, SUITE 100
DALLAS, TEXAS 75243.

_____
Judy L. S. Barnes
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge